

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

BILLY M. WALKER,)	
Register No. 530886,)	
)	
Plaintiff,)	
)	
v.)	No. 02-4222-CV-C-SOW
)	
TANYA KEMPKER, et al.,)	
)	
Defendants.)	

ORDER

On March 23, 2005, the United States Magistrate Judge recommended denying defendants' motion for summary judgment. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C). No exceptions have been filed.

A review of the record convinces the court that the recommendation of the Magistrate Judge is correct and should be adopted. Defendants' motion for summary judgment is denied.

Upon consideration of plaintiff's pro se cross-motion for summary judgment filed on January 31, 2005, such motion is also denied. Although defendants have not filed a response to the motion, the court finds that addressing such motion would be futile for the parties and the court. The issues raised in plaintiff's cross-motion for summary judgment are the exact issues which were addressed in this court's March 23, 2005, report which recommended that defendants' motion for summary judgment be denied. There remains a dispute as to the material facts of plaintiff's retaliation claim.

Inmates who file an appeal with the United States Court of Appeals for the Eighth Circuit are required to pay the full \$255.00 appellate filing fee, regardless of the outcome of the appeal. *Henderson v. Norris*, 129 F.3d 481, 484 (8th Cir. 1997). The filing of a notice of appeal is considered a consent by the inmate to allow prison officials to deduct an initial partial appellate filing fee and later installments from the prisoner's account.

IT IS, THEREFORE, ORDERED that plaintiff's pro se cross-motion for summary judgment is denied [61]. It is further

ORDERED that defendants' motion for summary judgment is denied [50].

/s/

SCOTT O. WRIGHT
Senior United States District Judge

Dated: April 27, 2005
Kansas City, Missouri